

- (ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).
- (iii) All of the individual schools, libraries, and library consortia receiving services are covered by:
 - a) individual technology plans for using the services requested in the application; and/or
 - b) higher-level technology plans for using the services requested in the application; or
 - c) no technology plan needed because application requests basic local and/or long distance service and/or voicemail only.
- (iv) The technology plan(s) has/have been approved by a state or other authorized body; the technology plan(s) will be approved by a state or other authorized body; or no technology plan needed because applicant is applying for basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.
- (v) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
- (vi) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.
- (vii) All bids submitted will be carefully considered and the bid selected will be for the most cost-effective service or equipment offering, with price being the primary factor, and will be the most cost-effective means of meeting educational needs and technology plan goals.

2. Part 54, Subpart F is further amended by adding new section 54.504(c)(1) to read as follows:

- (1) FCC Form 471 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:
 - (i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. §§ 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.
 - (ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).
 - (iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased, as well as to pay the discounted charges for eligible services from funds to which access has been secured in the current funding year. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).
 - (iv) All of the schools and libraries listed on the FCC Form 471 application are covered by:

- (a) an individual technology plan for using the services requested in the application; and/or
 - (b) higher-level technology plan(s) for using the services requested in the FCC Form 471 application; or
 - (c) no technology plan needed; applying for basic local and long distance telephone service only.
- (v) Status of technology plan(s) has/have been approved; will be approved by a state or other authorized body; or no technology plan is needed because applicant is applying for basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.
 - (vi) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.
 - (vii) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value.
 - (viii) The entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.
 - (ix) The applicant understands that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.
 - (x) The applicant recognizes that it may be audited pursuant to its application, that it will retain for five years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator.
 - (xi) All bids submitted were carefully considered and the most cost-effective bid for services or equipment was selected, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.

3. Part 54, Subpart F is further amended by adding section 54.504(h) to read as follows:

(h) *Filing of FCC Form 473.* All service providers eligible to provide telecommunications and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. FCC Form 473 shall be signed by an authorized person and shall include that person's certification under oath that:

- (1) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

- (3) No attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

4. Part 54, Subpart F is further amended by adding new section 54.508 to read as follows:

54.508 Technology plans

(a) *Contents.* The technology plans referred to in this subpart must include the following five elements:

- (i) A clear statement of goals and a realistic strategy for using telecommunications and information technology to improve education or library services;
- (ii) A professional development strategy to ensure that the staff understands how to use these new technologies to improve education or library services;
- (iii) An assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education or library services;
- (iv) A budget sufficient to acquire and support the non-discounted elements of the plan: the hardware, software, professional development, and other services that will be needed to implement the strategy; and
- (v) An evaluation process that enables the school or library to monitor progress toward the specified goals and make mid-course corrections in response to new developments and opportunities as they arise.

(b) *Relevance of approval under Enhancing Education through Technology.* Technology plans that meet the standards of the Department of Education's Enhancing Education Through Technology (EETT), 20 U.S.C. 6764, are sufficient for satisfying elements (a)(i),(ii),(iii) and (v), but applicants must supplement such plans with an analysis demonstrating that they meet the budgetary requirement described in (a) (iv) of this section. Furthermore, to the extent that the Department of Education adopts future technology plan requirements that require one or more of the five elements described in (a) of this section, such plans will be acceptable for satisfying those elements of (a). Applicants with such plans will only need to supplement such plans with the analysis needed to satisfy those elements of subsection (a) of this section not covered by the future Department of Education technology plan requirements.

(c) *Timing of certification.* As required under 54.504(b)(2)(vii) and (c)(1)(v), applicants must certify that they have prepared any required technology plans. They must also confirm, in FCC Form 486, that their plan was approved before they began receiving services pursuant to it.

(d) *Parties qualified to approve technology plans required in this subpart.* Applicants required to prepare and obtain approval of technology plans under this subpart must obtain such approval from either their state, the Administrator, or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth above in subsections (a) and (b).

5. Part 54, Subpart F is further amended by modifying section 54.516 to read as follows:

54.516 Auditing

(a) *Recordkeeping Requirements.*

- (1) *Schools and libraries.* Schools and libraries shall retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 5 years after the last day of service delivered in a particular Funding Year. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

Schools and libraries shall maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase.

- (2) *Service providers.* Service providers shall retain documents related to the delivery of discounted telecommunications and other supported services for at least 5 years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

(b) *Production of records.* Schools, libraries, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state or federal agency with jurisdiction over the entity.

(c) *Audits.* Schools, libraries, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the schools and libraries universal service support mechanism, including those requirements pertaining to what services and products are purchased, what services and products are delivered, and how services and products are being used. Schools and libraries receiving discounted services must provide consent before a service provider releases confidential information to the auditor, reviewer, or other representative.

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

In the matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

Today, we adopt measures to protect against waste, fraud, and abuse in the administration of the E-rate program. In particular, we resolve a number of issues that have arisen from audit activities conducted as part of our expanded oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General.

To deter bad actors, E-rate applicants will be held accountable for the contents of their applications and other filings. Continuing strong review and auditing programs serve as a long-term deterrent to waste, fraud, and abuse. I am particularly pleased that my colleagues have accepted a delegation of authority to the Bureau Chief of the Wireline Competition Bureau to quickly resolve audits that uncover instances of waste fraud and abuse. The measures we adopt herein are not the final steps we plan to take for strengthening oversight of the universal service program and combating waste, fraud, and abuse. My fellow Commissioners and I remain committed to deterring inappropriate uses of universal service monies and to rapidly detecting and addressing potential misconduct (including waste, fraud, and abuse), and we recognize that achieving these goals is a continual process. While we recognize that this item does not address the discount matrix issue, we are continuing to work on various proposals for improving our oversight of the universal service program, and we expect to issue an order adopting additional measures in the near future.

We at the FCC are proud of the schools and libraries support program, but we will never be satisfied with the status quo. We will continue to use all tools at our disposal to help us identify areas of E-rate program administration that are vulnerable to fraud, waste, or abuse, and E-rate applicants will be subject to a zero-tolerance policy. At the same time, we will continue to encourage participation in the program so that those that the program's true beneficiaries – the nation's students, library patrons, and all Americans – receive the support they need

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

In the matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

The measures we adopt in this item underscore the Commission's ongoing commitment to ensuring the integrity and effectiveness of the schools and libraries universal service support mechanism (E-Rate). I have been a stalwart supporter of the E-Rate program, but I have also emphasized the need to be steadfast in our efforts to eliminate waste, fraud, and abuse.

Over the last two years, the Commission has made a number of key improvements to the E-Rate mechanism. In April 2003, the Commission adopted a debarment rule to prevent bad actors from receiving continued support, and we also implemented other safeguards. And in May 2003, I organized a public forum to learn more about potential abuses of the program. USAC subsequently established a task force devoted to waste, fraud, and abuse. Based in large part on recommendations from public forum participants and the task force, the Commission adopted other measures to improve the program, including new rules that limit the frequency of discounts for internal connections and restrict equipment transfers among schools.

This Order builds on these earlier efforts by strengthening the Commission's and USAC's audit programs. By providing further guidance on when and how funds will be recovered in the wake of rule violations, by strengthening document-retention requirements, and by clarifying related rules, we will both deter misconduct and enable more effective and timely responses by USAC and the Commission. While these are important steps, we must continue to explore additional programmatic changes; most notably, I look forward to completing our rulemaking regarding possible changes in the discount levels available to schools and libraries. Our continuing oversight is critical to the E-Rate program's survival, and I applaud USAC, our staff, and my colleagues for their commitment to shoring up any remaining deficiencies.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

In the matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

Here we have a program that has been absolutely front-and-center in ushering children around this country into the Internet age. But we understand that the great progress we have made with schools and libraries can fade without constant attention and care. This item sets forth a needed framework that provides guidance for the recovery of funds from applicants that have failed to comply with the statute or with our rules. It establishes a timeframe for audits and investigations. And to enhance oversight and enforcement, it provides standards for document retention by program beneficiaries. These are good and helpful steps that enhance the integrity of the program and also bring some clarity to program applicants.

This new process provides more Commission oversight. It encourages closer oversight by the five of us and the more expeditious handling of disputes over applications. The underlying goal here is speedy resolution of any problems that audits turn up. I think we have found a balanced and efficient way to handle this. In our decision, we instruct the Bureau to take the first crack at reviewing audit findings relating to the schools and libraries support mechanism. But Bureau findings are subject to Commission review, and we commit here to rendering decisions on appeals within the very tight time-frame of six months. I expect this division of resources will serve our goals of reducing waste, fraud and abuse better than tying every finding up in a cumbersome and protracted full Commission process. If it does not, however, I stand willing to revisit this aspect of today's decision.

A large part of the challenge we face here is crafting a balanced approach. Vigilant oversight and procedures adequate to forestalling abuse are, of course, essential. But it would also be possible to go overboard by multiplying the complexity of the E-Rate program and making the process so cumbersome as to discourage applicants from taking advantage of it. If needy schools and libraries lack the resources to navigate a growing minefield of rules and requirements, we could wind up deterring the very applicants this program was designed to benefit and, worse, denying thousands of children access to the communications services they need to grow into fully productive citizens. So we must always keep the beneficiaries in mind as we work to resolve problems in the program. I think we head in that direction today, and I am pleased to support the item.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN
APPROVING IN PART AND DISSENTING IN PART**

In the matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

I commend Chairman Powell's efforts to prevent waste, fraud and abuse in the universal service schools and libraries program. The universal service schools and libraries program has been instrumental in facilitating access to advanced services for our nation's students. Strong fiscal and administrative oversight of the schools and libraries program is essential to ensure that schools and libraries will be able to use the funding available under the existing \$2.25 billion annual cap. I support the Chairman's efforts to protect the program and the critical educational opportunities it continues to provide for our nation's schoolchildren.

Today's decision adopts additional measures to protect against waste, fraud and abuse in the administration of the schools and libraries universal service support program. Today's action sets forth a policy on the recovery of improperly disbursed funds, strengthens existing safeguards to enhance the Commission's oversight and enforcement activities, and provides greater guidance for a more vigorous audit program to protect the financial integrity of the schools and libraries program. While I am pleased that the Commission is moving forward today on specific measures to strengthen its ongoing oversight of the schools and libraries program, I do not join in the decision to abdicate some of the Commission's critical policymaking and fiscal oversight responsibilities to the Bureau. Accordingly, I approve in part and dissent in part from the order.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

In the matter of Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

Since its inception in 1996, the universal service support mechanism for schools and libraries (commonly referred to as the E-rate program) has opened up a new world of learning and opportunity for millions of school children and library patrons. It has proven an enormously successful educational initiative. The E-Rate program has allowed us to achieve remarkable results in connecting classrooms and libraries in rural and urban areas to the Internet and connecting America's schoolchildren to the Information Age. By strengthening our schools and libraries, we have given our children access to the tools that they need -- that we, as a nation, need -- to compete and succeed in an increasingly global economy.

To ensure the continued success of the E-Rate program, we must remain committed to monitoring, auditing, reviewing and reinforcing the program. This Order demonstrates our commitment to the program and to its integrity. We take important steps here to further our ongoing effort to safeguard against waste, fraud, and abuse. The measures we adopt bolster our audit processes, which are essential to the oversight of the universal service fund, and they respond to programmatic concerns raised by our Office of Inspector General. The Order also sets into motion a process for reviewing USAC administrative procedures, which will afford the Commission the opportunity to ensure the transparency, effectiveness, and efficiency of the program's administration. The item also provides useful guidance on the content and approval of Technology Plans, which are used by applicants to assess and plan for their telecommunications needs.

This Order represents one important part of a larger effort to ensure the integrity and success of the E-Rate program. Through this Order and our previous Orders adopted in the past two years, we are working to safeguard against waste, fraud, and abuse, and, at the same time, to simplify and clarify the application process, so that we don't set up unnecessary obstacles for deserving applicants. As this item recognizes, our job is not done. Nevertheless, we take important steps forward in this Order. I appreciate the commitment of my colleagues, USAC, the service providers, and the schools and libraries, as we continue to advance these intertwined goals.